

Federal Communications Commission
Washington, D.C.

January 10, 2000

MGC Communications, Inc.
c/o Scott A. Sarem
Asst. Vice president,
Regulatory Affairs
3301 North Buffalo Drive
Las Vegas, NV 89129

Re: Acceptance of Comments As Timely Filed in (Docket No. 96-262)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceeding as timely filed due to operational problems with the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caten
For Magalie Roman Salas
Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
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Access Charge Reform)	CC Docket No. <u>96-262</u> /
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive Local)	
Exchange Carriers)	
)	
Petition of U.S. West Communications, Inc.)	CC Docket No. 98-157
For Forbearance from Regulation as a Dominant)	
Carrier in the Phoenix, Arizona MSA)	
)	
To the Commission)	

REPLY COMMENTS OF
MGC COMMUNICATIONS, INC.

Kent F. Heyman, Senior Vice President & General Counsel
Scott A. Sarem, Assistant Vice President, Regulatory
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MGC COMMUNICATIONS, INC.
3301 N. Buffalo Drive
Las Vegas, NV 89129
(702) 310-1000

November 29, 1999

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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REPLY COMMENTS OF
MGC COMMUNICATIONS, INC.

MGC Communications, Inc. ("MGC") hereby submits these reply comments on the Federal Communications Commission's ("FCC" or "Commission") *Fifth Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

¹ *Access Charge Reform*, CC Docket No. 96-262, *Fifth Report and Order and Further Notice of Proposed Rulemaking* (FCC 99-206, rel. Aug. 27, 1999) ("Notice").

I. Introduction

As mentioned in its initial comments, MGC is an active member of the Association for Local Telecommunications Service ("ALTS") and participates on its operating and policy boards. Accordingly, MGC supports both ALTS' initial comments and reply comments in this proceeding. In an effort to ensure that its switched access rates were just and reasonable, MGC hired ICC Consulting to conduct a cost study. MGC then referred ICC Consulting to ALTS to conduct a cost study that demonstrates the real cost of providing originating and terminating switched access by Incumbent Local Exchange Carriers ("ILECs") and Competitive Local Exchange Carriers ("CLECs"). Therefore, MGC supports the ALTS proposal for a benchmark CLEC rate and urges the Commission to take the appropriate action to ensure that IXC's must pay for the originating and terminating switched access they receive from CLECs.

In these comments, MGC will provide a brief description of its support for the ALTS benchmark approach as well as reiterate its position that CLEC access charge rates will decrease as CLEC local market penetration increases. Also, MGC will reply specifically to several of the dubious assertions made by Sprint in its initial comments and provide reasons why AT&T and Sprint must not be allowed to continue their use of illegal self-help in an effort to coerce CLECs into lowering their access rates.

MGC recommends that the Commission act to provide certainty so that CLECs will be in a position to recover capital expenditures in state of the art networks via cost-based access charges from IXC's that have benefitted by their use of these local exchange networks.

II. MGC AGREES WITH BOTH THE INITIAL AND REPLY COMMENTS OF ALTS.

The Commission must act to provide certainty to CLECs that when an IXC receives originating and terminating local exchange service from a CLEC that they must pay for the service. By adopting the ALTS benchmark approach, the Commission would establish a clear standard for IXCs to dispute access charges above the benchmark rate. MGC is comfortable with this approach because it has performed a cost study that demonstrates as MGC's switched utilization increases, its cost of providing switched access decreases.

MGC agrees with ALTS' conclusion that IXCs are required to maintain interconnection with all CLECs and pay CLEC access charges at their lawfully filed tariffed rates. In addition, the Commission should adopt a strong presumption that CLEC access charges at or below a benchmark rate of 5.8 cents per minute are just and reasonable. The Commission should declare that it will apply major forfeitures to IXCs that attempt to engage in self-help remedies such as unilateral refusal to pay lawfully tariffed CLEC access charges or unilateral efforts to block calls originating or terminating on CLEC networks. The declaratory ruling should make clear that CLECs with access rates at or below the benchmark need not go through a formal complaint process to obtain enforcement of those rights, but will be entitled to proceed directly to federal district courts on the basis of the Commission's blanket affirmation that all CLECs operating within the benchmark are entitled to such relief. If a CLEC is charging access rates above the benchmark, the Commission should reaffirm that the proper procedure for

aggrieved IXCs is not to unilaterally refuse payment or discontinue service, but to continue paying the tariffed rate and file a complaint with the Commission pursuant to section 208 of the Communications Act.

III. SPRINT'S COMMENTS ARE AN ATTEMPT TO MIS-CHARACTERIZE THE STATE OF THE MARKET FOR CLEC SWITCHED ACCESS SERVICES.

Sprint's Comments in this proceeding do a good job of describing the anti-competitive tactics taken by large IXCs to combat CLEC access charges. Sprint's Comments blindly assert that CLEC access charges are generally too high. However, MCI, who is attempting to merge with Sprint, states that "there is no evidence in the record to demonstrate that unreasonably high CLEC access charges are ubiquitous or even widespread."² In fact, MCI suggests that it would be a step backwards for the Commission to regulate CLEC access charges.³ Therefore, the Commission must take Sprint's comments at face value and take a more pragmatic approach to the issue of CLEC access charges.

As MGC set out in detail in its initial comments, Sprint and AT&T have engaged in illegal self-help. By Sprint's own admission, it has exercised self-help and not paid for lawfully tariffed switched access services it receives from CLECs. Sprint admits that it has withheld \$15.5 million in switched access payments owed to CLECs and that number is growing by \$2.3 million per month.⁴ The \$15.5 million and \$2.3 million per month

² MCI Comments at 18.

³ Id.

⁴ Sprint Comments at 15-16.

are insignificant to Sprint's overall business while the withheld revenue could run a CLEC out of business over a prolonged period of time. Sprint acknowledged that larger carriers have bargaining power over smaller carriers.⁵ Accordingly, Sprint's withholding of CLEC switched access charges is a bold attempt by a large carrier to force CLECs to reduce their switched access rates to below cost-based levels. The Commission must not allow larger carriers to wield their market power to coerce CLECs into lowering their just and reasonable switched access rates.

If Sprint believes that a given CLECs' access charges are unjust and unreasonable, it must file a 208 complaint and compel the CLEC to justify its rates before the Commission.⁶ Sprint, like AT&T has ignored the law and has exercised self-help. The Commission must enact rules to enforce the law so that carriers such as AT&T and Sprint may not utilize their market dominance in an effort to coerce CLECs into reducing their lawfully tariffed and cost-based interstate switched access rates. As MCI has suggested in its comments, the perceived problem of CLEC access rates will be short-lived once local competition takes hold.⁷ Until then, the Commission must take "swift enforcement [action] of relatively simple rules."⁸

⁵ Id. at 25-26

⁶ MGC has urged Sprint to file a 208 complaint at the Commission to challenge MGC's rates, but Sprint like AT&T has refused to take any lawful action.

⁷ MCI Comments, at 19

⁸ Id.

VI. CONCLUSION

For the foregoing reasons, the Commission should adopt the least intrusive rules that provide certainty to all carriers that they will not be forced to pay unreasonable access charges while at the same time guaranteeing CLECs that charge presumptively just and reasonable access rates they will be paid by IXC's that have received CLEC access services. The Commission must adopt rules that discourage the use of self-help with meaningful penalties levied against carriers that ignore Commission rules and take the law into their own hands.

Respectfully submitted,

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